sureties to appear and receive judgment if and when called upon any time during the next year. The learned President also ordered him to make restitution of the sum of $958.69 mentioned in the charge. This he has done.

From the learned President's reasons for imposing this sentence he appears to have taken a relatively lenient view because although the accused was doing the work of a supervisor he was in fact no more than a timescale clerk, and the supervision of the Department by senior officers being extremely lax the accused succumbed to the temptation placed before him. In the words of the learned President "The accused was a first offender who, as a result of a weakness in his character, has betrayed the trust which had been reposed in him. In the circumstances I think he should be given another chance to behave".

In my opinion the learned President has in this case not given sufficient consideration to the public interest. The principles upon which the Courts in this country act are those set out in *R. v. Ball*[1]. The first and foremost consideration of punishment is the public interest. The object of punishing crime is not only to punish the offender but also to deter others. Although it is desirable that the first offender should if possible be kept from coming into contact with hardened criminals, nevertheless other public servants submitted to temptations will not be deterred from succumbing to temptation if they see that the only punishment which it involves is some form of binding-over. Until it is understood by all public servants in this country that the normal punishment for helping themselves to public money is to be sent to prison they will continue to be weak-willed persons prepared to pilfer the till.

Much as I dislike sending to prison a person who has succeeded in placing himself in new employment, nevertheless I thought it necessary in this case that I should impose a sentence of imprisonment in order that others may be deterred. I have taken into consideration the fact that the accused has made restitution, that it was his first offence, and that the sentence is being imposed some months after the close of his trial. In these circumstances I only sentenced him to 6 months' imprisonment. The appeal was allowed and the order of the learned President varied as above.

Appeal allowed.

Solicitors: *Eugene Lye & Hoh.*

Re D. C. HENRY

[Cr. R. J. (Rigby J.) March 3, 1958]

[Penang — Criminal Revision No. 1 of 1958]

Penal Code, s.420 — Cheating — Obtaining goods on credit by issue of post-dated cheques — Sentence — Criminal Procedure Code (Cap.21), s.183(2)

In this case the accused was convicted of two charges of cheating. It was alleged by the prosecution that the accused obtained goods from a shopkeeper and gave post-dated cheques in payment which were subsequently dishonoured. The learned Magistrate found that the accused must have known that he would not have funds in the Bank to meet the cheques when they were due for presentation. He therefore convicted the accused and sentenced him to six months' imprisonment on each charge, such sentence to run concurrently. The accused had no previous record.

Held: the sentence imposed was excessive and in the circumstances of the case the accused should be unconditionally discharged under section 183(2) of the Criminal Procedure Code.

CRIMINAL REVISION IN CHAMBERS.

Rigby J.: — The accused in this case was convicted on two charges preferred against him of cheating, contrary to the provisions of section 420 of the Penal Code. He was sentenced to six months' imprisonment on each charge, such sentences to run concurrently.

The particulars of those two charges were that on the 10th and 13th April, 1957, the accused cheated a shopkeeper by dishonestly inducing him to deliver to him sundry goods to the total value of $50 and $70 respectively.

The brief facts of the case were that on the 10th April, 1957, the accused, already a customer at the shop and known to the shopkeeper for about a year previously, went into the shop, ordered sundry goods and said that he wanted them on credit. The shop-keeper declined to give him credit, whereupon the accused gave him a postdated cheque for $50. According to the complainant shop-keeper the accused, at the time of giving him the cheque, said that he would have money in the Bank on the 15th April and the cheque could be cashed on that day.

On the 13th April the accused again came to the shop, purchased $70 worth of goods and gave the complainant a postdated cheque for that amount dated the 18th April, 1957. It is worthy of note that on this occasion the complainant did not demur to supplying goods on credit and apparently was perfectly willing to accept the

postdated cheque. According to him the accused told him that he could cash the cheque on the 18th April, 1957.

The complainant subsequently negotiated — or attempted to negotiate — both cheques through third parties and both were duly returned to him dishonoured.

The prosecution called evidence that on the 10th April, 1957, the accused's Bank account was $7.03 in credit and that it remained at that figure on the 13th April. On the 2nd May the accused's monthly salary cheque of $228.50 was paid in to the credit of his account and on the same day the accused drew out two cheques in the sums of $100 and $115 respectively.

At all material times the accused was, to the knowledge of the complainant, employed in the Public Works Department, Butterworth.

The complainant stated in evidence that after the cheques had been returned to him dishonoured, during the months of April, May, June and July, he several times asked the accused for payment but the accused put him off by saying he would pay him on pay day. Notwithstanding this fact, however, it is manifest that the complainant was still content to supply the accused with goods on credit and, according to his own evidence, during the months of June and July he supplied him with goods to the value of $173.70, for which the accused paid $35 at the end of June and $80 at the beginning of July, leaving a debit balance of $58.70. According to the complainant, he allowed the accused such credit on the strength of a statement by the accused that he was expecting a loan of $1,500 from the Public Works Department. It may be, of course, that the accused had, in fact, applied for such a loan and had reasonable expectation of being granted it. There is certainly no evidence to the contrary.

On the 7th August, 1957, the complainant made his complaint to the Police in respect of the non-payment of the two cheques, and on the 17th September the accused was arrested on a Warrant of Arrest on these charges and produced before the Court.

The accused was unrepresented at his trial before the learned President. At his trial he denied that he had any intention of cheating the complainant. He said that the cheques were supposed to be presented at the end of the month; that when he was informed that they had been dishonoured he paid $115 to the complainant, on account therefor, in three amounts, two during May and one during June. He said that thereafter in July the complainant allowed him credit to the extent of $173 and it was only after he had lost his employment with the Public Works Department and consequently was not in a position to settle his account that the complainant, apprehensive as to when and how the account was likely to be settled, lodged this complaint with the Police hoping thereby that he would be able to collect at least $120 on the two cheques retained in his possession.

On the plain facts as they appear on the record there is, in my view, much to support the truth of the story of the accused that this was a running account and the cheques handed over by him to the complainant in connection with that account. The belated report to the Police and the several demands for the money are at least consistent with the story of the accused that there was a running account between the parties. The complainant's books of account were not produced in evidence nor, indeed, was any evidence adduced as to the type of goods ordered by the accused, nor any explanation as to the curious fact that on both occasions the goods ordered by the accused amounted to the exact round figures of $50 and $70 respectively. However, the learned President, having heard the oral testimony of the witnesses, disbelieved the accused's story that he had paid $115 on account of the two cheques. He accepted the complainant's evidence in respect of the two postdated cheques and said that he did not believe that the defendant "intended or was even able to pay into the Bank any money on the 14th or 15th in order to be able to meet the first cheque". The same finding of fact would, of course, logically apply in respect of the second cheque.

In short therefore, the learned President found as a fact that the accused deceived the complainant on both these occasions by dishonestly inducing him to deliver to him sundry goods to the value of $50 and $70 on credit on the security of the two postdated cheques.

"The act of drawing a cheque for payment of goods purchased implies at least three statements as to the state of affairs existing at the time when the cheque is drawn, first, that the drawer has an account with the bank in question; secondly, that he has authority to draw on it for the amount shown on the cheque; and, thirdly, that the cheque, as drawn, is a valid order for the payment of that amount, or that in the ordinary course of

events the cheque, on future presentation, will be honoured. It does not, however, imply any representation that the drawer already has money in the bank to the amount shown in the cheque, for he may either have authority to withdraw, or have an honest intention of paying in the necessary money before the cheque can be presented."

(*Ratanlal's* Law of Crimes, 18th edition, page 1058).

Again :—

"Where a person orders goods on credit and promises expressly or impliedly to pay for them on a particular date, then if the prosecution proves that at the date of the contract the circumstances of the accused were such that he must have known that it was practically impossible that he would be able to pay for the goods, the offence of cheating is committed."

(*Ratanlal's* Law of Crimes, 18th edition, page 1057).

On the facts of this case, having regard to the evidence as to the defendant's Bank account the learned President, in my view, was strictly justified in finding that at the time the accused presented the postdated cheques maturing and due on the 15th and 18th respectively the financial position of the accused, as a Government servant dependent on his monthly salary, was such that he must have known that he would not have the funds in the Bank to meet the cheques on the dates they were due for presentation. The facts, therefore, within the letter of the law, strictly support the charges of cheating.

However, with great respect to the learned President, the sentences imposed of six months' imprisonment on each charge to run concurrently were, in my view, wholly excessive and out of all proportion to the nature and seriousness of the offence committed. The accused was a man with a hitherto irreproachable record, who had never been in trouble before. It is abundantly clear that even after these postdated cheques had not been honoured the complainant was ready and willing to allow the accused credit for the next three months until in August he thought fit to make his complaint to the Police.

The case was one which might very much more appropriately have been brought as a civil action in the Magistrate's Court and it is, in my view, highly undesirable that the Police, in the virtual capacity of debt collectors, should undertake the prosecution of cases such as these without prior reference to the Deputy Public Prosecutor for his consideration and approval in each case as to the desirability of instituting criminal proceedings.

The accused was in prison serving this sentence from the 4th October, 1957 to the 6th January, 1958, when this case came to my attention and I made an order for his discharge.

In all the circumstances I am of the opinion that the ends of justice are best served by an order quashing the conviction and sentence and the substitution therefor, under section 183(2) of the Criminal Procedure Code, that the Court finds that the charges are proved but, without proceeding to conviction, orders that the charges be dismissed and the accused unconditionally discharged.

I direct that any conviction recorded against the accused in respect of these charges be expunged from all Police and Prison records. A copy of this Order will be sent to the learned Deputy Public Prosecutor, with a request that he ensures that the necessary action is taken.

Order accordingly.

KASSIM BIN ADAM & ANOR. v. G. E. BANDUKWALA & ANOR.

[O.C.J. (Wee Chong Jin J.) January 8, 1958]

[Singapore — Suit No. 589 of 1957]

Landlord and Tenant — Tenant not in possession of premises — Tenant not staying in the house — Action for possession — No service on tenant — Prayers to eject occupier.

In this action the plaintiff sought against the first defendant to whom they had let on a monthly tenancy No. 10-A Amber Road: (i) a declaration that the defendant having abandoned the use of the premises was no longer their statutory tenant; or alternatively, (ii) an order for recovery of possession of the land and premises in question. By their Statement of Claim the plaintiffs admitted that after the expiry of the notice to quit, alleged to have been duly served on the first defendant, the first defendant became their statutory tenant by virtue of the Control of Rent Ordinance.

They also in the same action sought against the second defendant, Shirin Fozdar, who they claimed now wrongfully occupied the said premises, a declaration that she had no right title estate or interest in the said premises.

The Writ of Summons which described the first defendant as "presently of Bombay at an address unknown" was never served on the first defendant.

The second defendant claimed to be in occupation of the premises as the licensee of the first defendant and denied that the plaintiffs were entitled to the reliefs sought against her.